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DIRECTOR OFFICE
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DECISION ON PETITION

In re Application of
James J. Macor
Application No. 09/353,316
Filed: July 14, 1999
For: **COMPUTER AND MOBILE
COMMUNICATION SYSTEM**

This is a decision on the request for reconsideration filed September 2, 2004, based on M.P.E.P. 711.03(c)(II), and pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment.

This application became abandoned for failure to timely file a proper reply to the Final Office action mailed November 13, 2002. A review of the file finds that the original Final rejection mailed November 13, 2002 was re-mailed to the new attorney at the new correspondence address as a courtesy on April 29, 2003. The courtesy copy of the outstanding Office action did not reset the period for response. A Notice of Abandonment was mailed on November 18, 2003.

Petitioner alleges that the Final Office action mailed November 13, 2002 was not received. In support thereof, a copy of the docket records for the address of record at the time the Final Office communication was mailed, has been provided and referenced in the accompanied request.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner's statement that "A search of the file jacket and docket records at Avaya revealed that no communication was received from the USPTO, dated November 13, 2002 regarding the above-identified application." is taken as though the practitioner personally searched the file

jacket and docket records as required and thus the petition has met the requirements of M.P.E.P. § 711.03(c), section II.

In view of the above, there is showing of non-receipt of the Office action at the correspondence address of record at that time. Accordingly, the application was not abandoned in fact.

The petition is **GRANTED.**

Accordingly, the Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

Given the amount of time that has expired since the Final Office action was originally mailed, i.e., November 13, 2002, the application file is being forwarded to the examiner to update the search and action as appropriate. From there, the application file will be forwarded to TC 2600 technical support staff to mail the new Office action prepared by the examiner. The shortened statutory period for reply will be set to run from the mailing date of the new action.



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